(24,348)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 604.

DAVID YOST

vs.

DALLAS COUNTY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 9, 1914.

1 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1914.

No. 4186.

DAVID YOST, Appellant,
vs.
DALLAS COUNTY, Appellee.

The United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Paul, Minnesota, on the third day of August, A. D. 1914, certifies that the record in the case above entitled, which is pending in this court upon appeal for review of the decree in favor of the appellee, is an action in equity, brought by the appellant as a judgment creditor of appellee, to have a commissioner appointed to levy and collect the special tax on the taxable property of said appellee, authorized by the laws of the State of Missouri, the officers of said county refusing to discharge their duties in that respect, although repeatedly commanded to do so by writs of mandamus issued by the court in which the judgment was rendered, and served at different times upon the proper officers of said county. The plaintiff, who is appellant herein, in his complaint alleges that he is a citizen of the State of Pennsylvania, and the defendant, Dallas County, is a municipal corporation of the State of Missouri; that he is the owner of record of a certain final judgment against the defendant for over a million dollars, recovered on the law side of the court in
2 which this bill was filed, on October 7, 1908, with interest thereon from that date. That said judgment was based upon judgments theretofore rendered by said court; that the original judgments were founded upon bonds, issued by the County in the year 1871, under an Act of the General Assembly of the State of Missouri, entitled "An Act to incorporate the Laclede & Fort Scott Railroad," approved January 11, 1860. This act, so far as it is necessary for the determination of the questions certified herein, is as follows:

"It shall be lawful for the County Court of any County in the State to subscribe to the stock of said company, or invest its three per cent bonds, or any other improvement fund belonging to the County, as stock in said road; and for the stock subscribed in behalf of the County may issue the bonds of the county to raise funds to pay for the same, and to take proper steps to protect the interests of the County; may appoint an agent to represent the county, vote for and receive dividends; any incorporated city, town or company may subscribe to the stock in said railroad company, and appoint an agent to represent its interests, give its votes, and receive dividends, and may take proper steps to guard and protect the interests of said city, town or company."

That under the laws of the State of Missouri in force at the time of the issuance of these bonds, which were for the sum of $235,000, it was made the duty of the proper county officers to levy and collect

annually a tax equal to thirty per centum of the amount of bonds issued; that this duty to levy and collect that tax, or any part of it, has never been performed by the County officers, and that there is no money in the County treasury which can be applied to the
3 payment of this judgment, or any part thereof; that the property of said county is exempt from seizure and sale under execution; that none of these bonds, or any part of the interest thereon, has ever been paid, and that the judgment of the plaintiff was duly recovered on said bonds, and the interest coupons attached thereto, the defense of the County, that such bonds were illegally issued, having been overruled by the court. That ever since the recovery of this, and the former judgments against the County, efforts have been made by the owners of said judgments to compel the levy of a tax to pay them; that writs of mandamus have been repeatedly issued by the court commanding the officers of Dallas County, Missouri, to levy a tax to pay said judgments; that the Marshals of the United States have been unable, except at times, and then only after long and vexatious delays, to secure service of process on said officers, during which time the said officers would, and did secrete themselves and evade the Marshals of the United States Court in their efforts to serve the said mandamus; that said writs of mandamus have in no case been obeyed, nor good cause shown for disobedience thereto; on the contrary they have been treated with open and flagrant contempt; the official power of the United States has been defied. That when attachments have been issued for contempt, for the failure of said officers to obey said writs, they would, and did, secrete themselves, abscond from the County and State, and when finally apprehended, obtain their release by promises to secure a compromise of the litigation, and upon their failure to perform their promise would evade recapture until their successors in office were installed,
4 when the whole farcical proceedings would be compelled to be rebegun against their successors in office, with like fruitless and farcical results. That the plaintiff has within late years instituted a number of proceedings against all of the agents of said Dallas County, without effective results. That on November 29, 1911, at plaintiff's expense, a writ of mandamus was issued to compel the then officers and agents of defendant, to levy a special tax for the sum of $70,500, being thirty per cent of the amount of bonds issued; that the county and its officers were duly served with process therein, and that on May 1, 1912, after a full hearing of counsel, a peremptory writ of mandamus was ordered, commanding the officers of said defendant to levy and collect a special tax for the sum of $70,500 upon the taxable property of said county, for the purpose of paying the same on said judgments; that when said officers met for the purpose of levying said taxes they refused to obey the said peremptory writ of mandamus, and failed to levy such tax; that writs of attachment were thereafter issued for the two justices of said county court, who constituted a majority thereof, and who had refused to obey said writ, and although the Marshals of this court made repeated efforts, and spent many days searching for them, they have been unable to apprehend them by reason of the fact that they concealed themselves

or absconded from the county and state; that meanwhile the terms of said officers, so in contempt, have expired; that an alias peremptory writ of mandamus was issued at the expense of this plaintiff on April 9, 1913, but owing to the fact that said officers and agents concealed themselves the said writ remains unserved, although
5 through no fault of the plaintiff; that to sue out additional writs of mandamus each year would be expensive, and would require a multiplicity of suits, delays, and with the result that they would be disobeyed as they have in the past. That the officers of the county charged by law with the duty of the levy and collection of taxes are:

(*a*) Three Justices of the Peace.
(*b*) The County Clerk, whose duty it is to extend them on the tax books.
(*c*) The Collector, whose duty it is to collect them.
(*d*) The County Treasurer, whose duty it is to receive taxes uncollected and disburse them to the proper officers;

that all the acts required to be done to collect the $70,500, to which the plaintiff is now entitled under his judgment and writs of mandamus, are clerical and ministerial, and no act of discretion whatever is required to accomplish this purpose. Sections 30 and 31, page 427 of the Revised Statutes of Missouri of 1857, which were in force when the bonds were issued, and which became a part of the contract between the parties, provided that the county court should levy to pay such bonds a special tax not exceeding thirty per cent in any one year of the $235,000, which is $70,500, that it should hold and apply this tax to the payment of such bonds and to no other purpose, and that the last previous assessment should constitute the basis of the assessment or levy. The last previous assessment has been made and recorded, and the only acts requisite to collect the $70,500 are the mere clerical or ministerial acts of apportioning it among the taxables in the county on the basis of that assessment, and collecting it of the parties and properties liable.

6 It is therefore prayed that the court, sitting as a court of equity, appoint a commissioner for the purpose of levying and collecting and paying over the taxes as prescribed by the laws of the State of Missouri.

The defendant filed a motion to dismiss the bill upon the grounds:

1. The facts alleged are insufficient to state a valid case in equity.
2. Plaintiff has a plain, adequate and complete remedy at law.
3. This court possesses no power or authority to levy or collect taxes for the satisfaction of the judgment mentioned in plaintiff's bill; neither has it authority to appoint or designate any other person for that purpose.
4. The granting of the relief prayed for by plaintiff would be an invasion of the constitutional and sovereign rights of the State of Missouri and its citizens.
5. To levy and collect the tax prayed for in plaintiff's bill would tend to deprive the State of Missouri of the right it possesses as a sovereign State, secured to it by the Federal Constitution, and would destroy the republican form of government guaranteed to it by that

The motion to dismiss was sustained by the trial court, and from that decree this appeal was taken.

And the United States Circuit Court of Appeals for the Eighth Circuit further certifies that the following questions of law are presented to it in the cause above entitled; that the decision of these questions is indispensable to the determination of this cause, and to the end that the cause may be properly determined and disposed of, it desires the instruction of the Supreme Court of the United States upon the following questions:

1. Has a District Court of the United States, sitting as a court of equity, jurisdiction of such a cause?

7 2. When a judgment has been recovered on the law side of a District Court of the United States of competent jurisdiction, against a county of the State of Missouri, on its bonds issued by authority of law, and the laws of that State in force at the time the bonds were issued authorized such county to levy and collect taxes to pay such bonds, and the county has no funds in its treasury which can be applied to the payment of the judgment, and its property is, under the laws of the State, exempt from seizure and sale under execution; when the officers charged by the laws of the State with the duty to levy and collect taxes to pay such judgment refuse so to do, when the court in which such judgment was rendered has a number of times issued writs of mandamus commanding such officials to levy the taxes which they were authorized and which it was their duty to levy to pay such judgment, but these officials have, when possible, evaded service of these writs, and when served have wilfully and defiantly refused to obey the writs of mandamus, and the fact has been conclusively demonstrated by the proceedings at law that the plaintiff is utterly remediless at law by mandamus or otherwise for the failure of the county to pay, and the refusal of the officers of the county to discharge their duty to levy and collect taxes and therewith to pay his judgment; and when the last previous assessment was made which, by the statute in force at the time the contract was made, was authorized and made the basis of the levy of the amount to which the plaintiff is now entitled under his judgment and writs of mandamus so that no act of discretion is required to levy and collect it, but only the clerical or ministerial acts of ap-

8 portioning the amount among the assessed values of the taxables specified in the last previous assessment, placing it on the tax books and collecting it of the persons and property liable therefor, has the Federal Court of the District in which the judgment was rendered, and the futile writs of mandamus issued and, when possible, served, the jurisdiction and authority in equity to appoint a commissioner, receiver or other officer to make the apportionment and to collect the amounts which the owner of the judgment is entitled to have collected from the parties and properties liable therefor.

WALTER H. SANBORN,
U. S. Circuit Judge.
WALTER I. SMITH,
U. S. Circuit Judge.
JACOB TRIEBER,
U. S. District Judge.

9 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing certificate in the case of David Yost, Appellant, vs. Dallas County, No. 4186, was duly filed and entered of record in my office by order of said Court, and as directed by said Court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this third day of August, A. D. 1914.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] U. S. Circuit Court of Appeals, Eighth Circuit, May Term, 1914. No. 4186. David Yost, Appellant, vs. Dallas County. Certificate of Questions to the Supreme Court of the United States. Filed Aug. 3, 1914. John D. Jordan, Clerk.

Endorsed on cover: File No. 24,348. U. S. Circuit Court Appeals, 8th Circuit. Term No. 604. David Yost vs. Dallas County. (Certificate.) Filed August 21, 1914. File No. 24,348.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

DAVID YOST, Petitioner,

vs.

DALLAS COUNTY, Respondent.

No. 604.

MOTION TO ADVANCE.

David Yost, the petitioner herein, moves the Court to advance this cause upon the docket for final hearing for the following reasons:

That the matter to be herein determined is the jurisdiction and power of the United States District Court of the Southern Division of the Western District of Missouri to enforce its mandatory orders heretofore made to require a special tax of $70,500.00 for the year 1912, and the same sum for the year 1913, to be levied upon the taxables of Dallas County, Mo., to be applied pro rata to the payment of certain judgments in favor of the petitioner and others against Dallas County, Mo., and of a like sum, for same purposes, in succeeding